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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/500,115	02/06/00	PONIKAU	J 07039-104002

HM22/0406

Mark S Ellinger
Fish & Richardson PC PA
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EXAMINER

BAWA, R

ART UNIT	PAPER NUMBER
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1619

DATE MAILED:

04/06/01

VO

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

1. File Copy

Office Action Summary	Application No. 09/500,115	Applicant(s) Ponikau
	Examiner Mr. Raj Bawa	Group Art Unit 1619

Responsive to communication(s) filed on Oct 30, 2000.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 70-129, 131-133, 135-137, and 139-141 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 70-129, 131-133, 135-137, and 139-141 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 6 and 7

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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- (1) The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
- (2) Claims 70-129, 131-133, 135-137, and 139-141 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "in an amount, at a frequency, and for a duration effective to eliminate said asthma and said non-invasive fungus-induced rhinosinusitis" is indefinite in the context employed because (I) it is relative; and (ii) the phrase is neither specified in the specification, nor would it be apparent to one of ordinary skill in the art. As a result, the metes and bounds of the patent protection desired would be unascertainable.

Applicant's arguments filed on 12-27-00 have been fully considered but they are not persuasive.

It is Examiner's position that the above phrase does not meet the threshold requirement of clarity and precision and are not in compliance for definiteness of 35 U.S.C. 112, second paragraph. Note that definiteness of the claims is important to allow others who wish to enter the marketplace to ascertain the boundaries of protection that are provided by the claims (*Ex parte Kristensen* 10 USPQ2d 1701, 1703).

- (3) Claims of this application conflict with claims of Application Nos. 09/177,273;; 09/177,164; 09/177,165; 09/176,990; and 09/177,659. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such

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claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

- (4) **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

- (5) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Raj Bawa whose telephone number is (703) -308-2423. The examiner can normally be reached on Tuesday through Friday from 7:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana Dudash, can be reached on (703) -308-2328. The fax phone number for the organization where this application or proceeding is assigned is (703) -305-3592.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) -308-1235.

Bawa/LR

March 28, 2001



RAJ BAWA, Ph.D.
PRIMARY EXAMINER